IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28/11/2003

CORAM

THE HONOURABLE MR.JUSTICE A.K.RAJAN

Second Appeal No.82 of 1993

Mela Ayyavayal Ayakkattars
rep. by
1. Palani Andi
2. Velu ... Appellants

-Vs-

1. Sannasi
2. The Government of Tamil Nadu
rep. by the District Collector
Pudukottai. ... Respondents

Appeal against the judgment and decree of the Subordinate Judge, Pudukottai dated 22.04.1990 and made in A.S.NO.80 of 1991 reversing the decree and Judgment of the Principal District Munsif, Pudukottai dated 31.07.1990 and made in O.S.No.903 of 1986.

!For appellants : Mr.V.Srinivasan

^For Respondents : Mr.K.Balasubramanian for R1.
No appearance for R2.

:ORDER

The suit has been filed by two Ayakkattars of Mela Ayyavayal. The plaintiffs prayed for a decree declaring that the defendants are not entitled to get water for irrigation to the suit land from Mela Ayyakulam and for permanent injunction restraining the first defendant from taking water from Mela Ayyakulam to their suit lands.

2. The trial Court decreed the suit, but the first appellate Court reversed the finding. Against the order of the first appellate Court, this second appeal has been filed. The second appeal has been admitted on the following substantial question of law:
"Whether the suit Eri is intended only to irrigate the lands in Mela Ayyavayal Ayyakat and that as such the first respondent has no right to take water to his lands situate in Mellur Village?"

3. Heard the learned counsel for the appellants and respondents. As seen from the prayer, the prayer is not for enforcing the right conferred on the plaintiffs. But, it is only to prohibit the defendant from getting the water. Admittedly, the plaintiffs are Ayyakattars of Eri. They can ask for protection of their right. If the Government decides to extend the benefit to other Ayyakkatars, no body has got any right including the existing Ayyakattars to prohibit such a benefit being conferred on new Ayyakattars. Therefore, the suit filed in the manner which is not maintainable. It is not the case of the plaintiffs that their rights are affected. Therefore, the suit is liable to be dismissed and the appellate Court also dismissed the suit.

4. In the circumstances, the substantial question of law is answered against the appellant. It is made clear that the plaintiffs are entitled to rights of Ayyakattars. If any of their rights are infringed, they are always entitled to protect that right by appropriate proceedings.

5. In the result, the second appeal is dismissed. No costs.

Index:yes
Internet:yes

ksr

To
1. The District Collector
Pudukottai.

2. The Subordinate Judge,
Pudukottai.

3. The District Munsif
Pudukottai.